Supreme Court, U.S.
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No. 01-135

IN THE

Supreme Court of the United States

STANLEY REINISH AND CAROL REINISH, *et al.*,
Petitioners,

v.

JOHN K. CLARK, *et al.*,
Respondents.

On Petition for a Writ of Certiorari to the District Court of Appeal, First District, State of Florida

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BRIEF FOR RESPONDENTS IN OPPOSITION

ROBERT A. BUTTERWORTH
Attorney General
JARRELL L. MURCHISON
Assistant Attorney General
OFFICE OF THE ATTORNEY GENERAL
The Capitol—Tax Section
Tallahassee, FL 32399-1050
(850) 414-3300

H. BARTOW FARR, III
Counsel of Record
FARR & TARANTO
1220 19th Street, N.W.
Washington, DC 20036
(202) 775-0184

WILSON-EPES PRINTING CO., INC. – (202) 789-0096 – WASHINGTON, D. C. 20001

QUESTION PRESENTED

Whether a partial tax exemption granted to property owners using their property as a "permanent residence"—in order to "promot[e] the stability and continuity of the primary permanent home" (Pet. App. 34)—impermissibly discriminates against property owners using their property as a seasonal or vacation residence.

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BRIEF FOR RESPONDENTS IN OPPOSITION

STATEMENT

This case involves a challenge to certain provisions of the Florida Constitution and Florida Statutes that grant a partial tax exemption to real property used by its owner, or a legal or natural dependent, as a "permanent residence." Petitioners, Illinois residents who own property in Florida used only as a seasonal residence, contend that this exemption for permanent residences violates the privileges and immunities clause, the commerce clause, and the equal protection clause. The circuit court ruled against petitioners on all their claims, and the court of appeal affirmed. The state supreme court denied a petition for review.

The so-called "homestead exemption" challenged by petitioners here is set forth in both the Florida Constitution

and Florida statutory law. *See* Florida Constitution, Article VII, Section 6(a); Fla. Stat. § 196.031(1), (3). The relevant provisions establish that owners of certain property shall be exempt from taxes on up to $25,000 of the assessed valuation of that property, depending upon the use to which the property is put. Fla. Stat. § 196.031(3)(d), (e). To qualify for the exemption the owner of the property, or a person legally or naturally dependent on the owner, must use the property as his or her "permanent residence." Florida Constitution, Article VII, Section 6(a); Fla. Stat. § 196.031(1). A permanent residence is defined as "that place where a person has his or her true, fixed, and principal home and principal establishment to which, whenever absent, he or she has the intention of returning." Fla. Stat. § 196.012(18). As might be expected from this language, "[a] person may have only one permanent residence at a time," *id.*, and the owner of a seasonal or vacation house—one that the owner does not use as his or her "true, fixed, and principal home"—is not eligible to receive a homestead exemption for that property.

The homestead exemption is one of several provisions of Florida law aimed at ameliorating the financial burdens, tax and otherwise, faced by persons with respect to their principal source of shelter. Although the homestead exemption was first granted to homestead owners during the Depression in 1934 (then in the amount of up to $5,000 of assessed valuation), the State has had laws protecting homesteads from forced sale as far back as the Florida Constitution of 1868. *See* Florida Constitution, Article X, Section 1 (1868). *See also* Florida Constitution, Article X, Section 4 (1885) (protecting homestead property from other judgment liens). The State has also placed limitations on annual increases in the assessed valuation of homestead property. Florida Constitution, Article VII, Section 4(c); Fla. Stat. § 193.155. These limitations, also challenged by petitioners (Pet. 3 n.4), likewise do not apply to property used as a seasonal or vacation residence.

Petitioners have their permanent residence in Chicago, Illinois. Pet. App. 3. In addition, however, they own a residence in Ocean Ridge, Florida, which they occupy for some four or five months a year. Pet. App. 3-4. Seemingly recognizing that they would not be eligible for a homestead exemption on this seasonal property, petitioners did not apply for the exemption but rather filed suit challenging the exemption on the ground that it impermissibly discriminated against nonresidents of Florida, in violation of the privileges and immunities clause, the commerce clause, and the equal protection clause. Petitioners also sought to represent a class of nonresident property owners in all 67 Florida counties. On behalf of themselves and the class, petitioners asked for declaratory and injunctive relief, as well as "a refund of such portion of the residential real estate taxes paid by [petitioners] and the Class, which they would not have been required to pay had the Homestead Tax Exemption been available to them." Pet. App. 56.

The circuit court rejected petitioners' claims in their entirety, observing *inter alia* that "there is no basis under Florida law for any dwelling used only as a vacation or seasonal residence being entitled to homestead tax relief, regardless of whether the owner is a resident of Florida or a resident of another state." Pet. App. 38-39. The district court of appeal affirmed. First addressing the equal protection clause claim, the court of appeal found that "[t]he underlying classification in the exemption provisions is based primarily on the *use* of the property rather than on the *user*," Pet. App. 11, and that the partial exemption for owners using their property as a homestead was justified by strong state interests.[1] The court pointed out that "[p]ublic policy

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[1] The court also observed that Florida law made no distinctions with regard to owners of nonhomestead property, stating that "the Florida exemption treats the Reinishes no differently from . . . Florida residents

considerations favor laws protecting the basic homestead, which 'promote the stability and welfare of the state by encouraging property ownership and independence on the part of the citizen and by preserving a home where the family may be sheltered and live beyond the reach of economic misfortune.'" Pet. App. 15 (quoting *Bigelow v. Dunphe*, 197 So. 328, 330 (Fla. 1940)). The court concluded that the homestead exemption could properly be supported by "the historic, civic, and economic significance of the need to foster and protect the primary residence of Florida homeowners, without an attendant need to give the same high level of protection to other types of residential properties . . . ." Pet. App. 15-16.

The court of appeal rejected petitioners' privilege and immunities clause claim for similar reasons. Although the court acknowledged that the Florida tax system results in a "difference in taxation treatment between the real property of non-residents and the property of *some* Florida residents (those who meet the 'permanent residence' requirement)," Pet. App. 22, it found that this difference was "only incidentally related to state residency" and further found that "it is explained by the practical effect of a provision that was intended to provide financial assistance to owners who make the Florida property their permanent residence." Pet. App. 22. The court then determined that the exemption was "closely and substantially related to the State's valid objective to promote and protect taxpayers' financial ability to purchase and maintain the primary shelter." Pet. App. 23. In so doing, it declared that "[a] secondary or vacation home does not implicate the same acute public policy concerns relating to the establishment and protection of a stable, financially secure primary residence." Pet. App. 23.

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who use Florida real property as a secondary, seasonal, or vacation residence." Pet. App. 12.

Finally, the court of appeal found no merit in petitioners' commerce clause claim. Rejecting petitioners' claim of *per se* discrimination, the court stated that "the Florida homestead tax exemption neither distinguishes between Florida residents and non-residents nor disparately treats identically situated persons. The focus of the exemption is on the use of the property itself, and not on the user." Pet. App. 31-32. Furthermore, the court noted, the homestead exemption, far from seeking to disadvantage interstate commerce, rests upon a sound, nondiscriminatory governmental objective: "promoting the stability and continuity of the primary permanent home." Pet. App. 34. The court thus concluded that no impermissible burden on interstate commerce had been shown.

Petitioners petitioned for discretionary review in the Florida Supreme Court. That court declined to accept jurisdiction and dismissed the petition. *See* Pet. App. 43.

ARGUMENT

This case does not warrant further review. Although petitioners seek to portray the Florida homestead tax exemption as granting an impermissible tax preference to residents of Florida, the claim is meritless. Insofar as Florida provides a partial tax exemption to persons using real property as their homestead and denies it to other persons (both residents and nonresidents) using real property for other purposes, the court of appeal correctly upheld the exemption on the ground that it advances the legitimate public purpose of "promoting the stability and continuity of the primary permanent home." Pet. App. 34. Nothing in the various constitutional provisions relied on by petitioners, or in the cases that they cite, purports to disable a State from providing that assistance or requires that it serve its substantial interest in helping homestead owners only at the cost of providing similar assistance to owners of seasonal or vacation property

as well. Moreover, despite petitioners' assertions to the contrary, the decision below does not conflict with any decision of this Court or with any decision of federal courts of appeals or state supreme courts. The petition thus should be denied.

1. Petitioners' primary complaint about the decision below (Pet. 9-15) is that the court of appeal, in evaluating their constitutional claims, improperly compared petitioners to Florida residents who are denied the homestead exemption rather than to Florida residents who receive it. But petitioners are misreading what the court of appeal did. As is evident from its opinion, the court of appeal addressed petitioners' claims of impermissible discrimination with reference to two distinct classes of Florida taxpayers—Florida residents owning homestead property and Florida residents owning seasonal or vacation property—finding no constitutional infirmity in either case. As to the first class, the court determined that petitioners' claims of unequal treatment foundered on the fact that petitioners (who do not use their Florida property as their primary residence) are not similarly-situated to Florida homestead owners (who do) and that the provision of certain tax benefits only to homestead owners is justified by the substantial public interest in ameliorating tax burdens on their principal source of shelter. *See* Pet. App. 14-16, 22-23, 31-32. As to the second class, the court pointed out that petitioners have no basis at all for claiming unequal treatment with Florida owners of nonhomestead property because they are treated exactly the same. *See* Pet. App. 12, 19, 31-32. Thus, whatever basis of comparison is used, petitioners' claims are without merit.

Petitioners' other main thrust (Pet. 16-17) is to question the purpose of the homestead tax exemption, suggesting that it is just a naked preference for Florida residents. But, first of all, the court of appeal accurately noted that the homestead exemption is tied to the use of the subject property, not to the

identity or residence of the user. *See* Pet. App. 11. Although the court recognized that the owner of a Florida homestead will naturally be a Florida resident, Pet. App. 19, it observed that more lenient tax treatment of homestead property, far from being mindless favoritism for residents as residents, "promot[es] the stability and welfare of the state by encouraging property ownership and independence on the part of the citizen and by preserving a home where the family may be sheltered and live beyond the reach of economic misfortune." Pet. App. 15.[2] This concern for preserving the primary source of shelter is not brought into play by ownership of property that is used as a second or third residence. Thus, while the court of appeal gave considerable weight to "the historic, civic, and economic significance of the need to foster and protect the primary residence of Florida homeowners," Pet. App. 15-16, it found no "attendant need to give the same high level of protection to other types of residential properties . . . ." Pet. App. 16.

It seems self-evident that a State has a legitimate interest in assisting taxpayers with the tax burdens of owning their primary residences, *see* note 7 *infra* (noting widespread tradition of granting homestead exemptions), and petitioners do not appear to argue otherwise. Instead, they insist that this purpose cannot be treated as the basis of the Florida homestead exemption because, *first*, the Florida Legislature did not expressly declare it to be the purpose and, *second*, the exemption is granted even to "billionaires" (Pet. 17). But this Court has often said that a state legislature is not required to

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[2] The interest in setting the level of tax burdens to be faced by homestead owners is, by its very nature, limited to homestead ownership within the taxing jurisdiction. The State of Florida obviously has no power to tax homestead property in other States and, as a consequence, no power to determine what the tax burden on homestead owners in other States should be. If it is able to address homestead ownership at all, therefore, it must do so for Florida residents, and Florida residents alone.

set forth reasons for its enactments, *see, e.g.*, *Montana v. Egelhoff*, 518 U.S. 37, 49 n.3 (1996), and the court of appeal here had little difficulty in identifying the underlying purpose of the homestead exemption both from its structure and history and from the experience of other States with similar laws. *See* Pet. App. 15-16; *see also* note 7 *infra*.[3] As for the fact that the homestead exemption is granted even to owners of highly-valued properties, petitioners fail to mention that the *relative* worth of the exemption diminishes as the assessed value of the property increases. As a result, the greatest relief—measured as a percentage of the overall tax burden—is directed to those property owners who are likely to need it most. Given the broad authority of state legislatures to establish reasonable systems of taxation, *see, e.g.*, *Lehnhausen v. Lake Shore Auto Parts Co.*, 410 U.S. 356 (1973), there is no reason to second-guess that legislative judgment here.

2. Once it is recognized that the homestead exemption serves a legitimate and substantial state interest, it becomes readily apparent that petitioners' constitutional claims are without basis. None of the provisions relied on by petitioners bars a State from helping homeowners with the costs of maintaining their primary source of shelter.

Petitioners first argue (Pet. 15-21) that the Florida homestead exemption improperly makes distinctions between residents and nonresidents in violation of the privileges and immunities clause. *See, e.g.*, *Lunding v. New York Tax Appeals Tribunal*, 522 U.S. 287 (1998). But, as this Court observed in *Lunding*, even categorical distinctions between residents and nonresidents will pass muster so long as the

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[3] It is apparent from the homestead exemption itself that its purpose is to help homeowners using their property as a primary residence and not just to help Florida residents generally. If the latter were the case, then the exemption would apply to *all* homes owned by Florida residents, not just to the more limited class of "permanent residences."

state provides sufficient reasons for the different treatment. *See id.* at 311 ("[o]ur precedent allows States to adopt justified and reasonable distinctions between residents and nonresidents in the provision of tax benefits, whether in the form of tax deductions or tax credits").[4] Thus, even if the Florida laws are regarded as making distinctions based on residency itself—as, in one important sense, they plainly do not, given that Florida owners of vacation or seasonal property are treated just as nonresident owners are—they are justified by the legitimate interest in protecting ownership of the primary source of shelter. In *Lunding*, of course, the Court struck down the state refusal to permit alimony deductions by nonresidents, while allowing the deductions for all residents, precisely because New York could not offer a sufficient explanation for that disparity.

The existence of this substantial state interest also serves to distinguish the other cases cited by petitioners, primarily state-court decisions dealing with very different tax schemes. Not only do those cases typically involve absolute discrimination between similarly-situated residents and nonresidents, *see, e.g.*, *City of New York v. State*, 94 N.Y. 2d 577, 730 N.E. 2d 920 (2000), but they involve tax provisions that do little more than extend across-the-board preferences to state residents because they are residents. *See, e.g.*, *Wood v. Dept. of Revenue*, 305 Or. 23, 749 P.2d 1169 (1988). In this case, by contrast, Florida has provided a specific, narrowly-defined benefit to certain taxpayers who, by virtue of their use of

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[4] It is thus not the case, as petitioners sometimes appear to assume, that a State must always treat residents and nonresidents alike. While a State may not discriminate without a substantial reason, or require new residents to take a back seat to more established residents, this Court has stated that "[a] bona fide residence requirement, appropriately defined and uniformly applied, furthers the substantial state interest in assuring that services provided for its residents are enjoyed only by residents." *Martinez v. Bynum*, 461 U.S. 321, 328 (1983).

property as a homestead, have a greater need of assistance with the tax burdens of home ownership. The state-court decision addressing that kind of tax provision, *Rubin v. Glaser*, 83 N.J. 299, 416 A.2d 382, *appeal dismissed*, 449 U.S. 977 (1980), held that it was *not* an example of unconstitutional discrimination, concluding that the more favorable treatment of homestead property was justified by the public interest in promoting communities of stable, secure primary residences.[5]

Petitioners' dormant commerce clause arguments (Pet. 22-27) fare no better. To begin with, it is not at all clear that petitioners, as owners of residential property, may invoke the commerce clause to challenge the taxation of that property. This Court has stated that "[t]he dormant Commerce Clause protects markets and participants in markets, not taxpayers as such," *General Motors Corp. v. Tracy*, 519 U.S. 278, 300 (1997), and has made clear that "in the absence of actual or prospective competition between the supposedly favored and disfavored entities in a single market, there can be no local preference, whether by express discrimination against interstate commerce or undue burden upon it, to which the dormant Commerce Clause may apply." *Id.* Although petitioners try to fit within this "market" principle by asserting that the State discriminates between residents and nonresidents in the market for *purchasing* Florida real estate,

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[5] Petitioners ultimately advance the position that the State should be required to provide each property owner with one homestead tax exemption, regardless of whether the owner has any property within the State that is used as a homestead. Pet. 14. All this proposal does, however, is to unhitch the exemption from the very state interest (assistance with the primary source of shelter) that gives it meaning. Also, if the same requirement were imposed in every State, it would mean that owners of multiple residences would get multiple exemptions if their properties were located in different States but just one exemption if they were located in a single State. Petitioners offer no grounds for thinking that the Constitution compels this kind of reverse favoritism.

this theory overlooks the critical fact that taxation of real property in Florida has nothing to do with the residence of the purchaser of that property. A resident of New York or Massachusetts or Illinois who purchases residential real estate in Florida, and then makes that property his or her permanent home—as tens of thousands of out-of-state purchasers do every year—is fully entitled to claim the homestead exemption for the purchased property, while a Florida resident purchasing property as a second home is not. Thus, even if the commerce clause is truly at issue here, there is no basis for an out-of-state purchaser to claim discrimination: it is the ultimate use of the property, not the residence of the purchaser, that determines whether the exemption is available or not.

Petitioners also fail to show that the State has burdened interstate commerce in any recognizable sense. Here, unlike the situation in *Camps Newfound/Owatonna, Inc. v. Town of Harrison*, 520 U.S. 564 (1997), the State has not disadvantaged interstate commercial activity but, rather, has sought to provide relief to individual taxpayers in the local activity of maintaining their principal homes. The court of appeal, in rejecting petitioners' commerce clause claim, found that this treatment was well within permissible bounds, stating that the homestead exemption "is an even-handed regulation that promotes the legitimate, strong public interest in promoting the stability and continuity of the primary permanent home." Pet. App. 34. Nothing offered by petitioners demonstrates that this regulation creates an undue burden on their interests in commerce specifically (if, indeed, they have any) or on interstate commerce generally.

Petitioners' final constitutional claim, based on the equal protection clause (Pet. 27-29), is also poorly founded. Whether this Court applies a rational basis standard or even some heightened standard, the tax provisions at issue rest upon a wholly reasonable distinction: between use of

residential property as a primary residence and use of residential property for other purposes.[6] Indeed, for all petitioners' complaints, they never bother to explain why it should be deemed irrational for a State to decide that the tax burden imposed on the principal source of shelter ought to be somewhat less onerous than the tax burden on seasonal or vacation homes. That same distinction, in fact, is drawn, in one form or another, by virtually every State in the Nation.[7]

In sum, this case presents no reason for review by this Court. Petitioners plainly would like to obtain a Florida homestead exemption without actually having a Florida homestead, but that grievance is not one of constitutional dimension.

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[6] This case does not involve distinctions based upon the date or duration of state residency, both of which have raised equal protection concerns. *See Hooper v. Bernalillo County*, 472 U.S. 612 (1985); *Zobel v. Williams*, 457 U.S. 55 (1982). Any person establishing a permanent home in Florida, regardless of when he or she elects to do so, is entitled to claim the homestead exemption.

[7] A 1995 survey, relied on by petitioners (Pet. 21), shows that 48 States, as well as the District of Columbia, provided tax relief to at least some homestead owners, with 18 States extending relief to homestead owners generally. *See* 1 Advisory Commission on Intergovernmental Relations, Significant Features of Fiscal Federalism 138-43 (Table 36) (1995).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

ROBERT A. BUTTERWORTH
Attorney General
JARRELL L. MURCHISON
Assistant Attorney General
OFFICE OF THE ATTORNEY GENERAL
The Capitol—Tax Section
Tallahassee, FL 32399-1050
(850) 414-3300

H. BARTOW FARR, III
Counsel of Record
FARR & TARANTO
1220 19th Street, N.W.
Washington, DC 20036
(202) 775-0184